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SUBJECT: TRAFFICKING IN PERSONS - INTERPRETING THE STATISTICS

REF: A. 09 BERLIN 256
[1](#)B. 06 BERLIN 1094

[1](#)1. (SBU) Summary: According to preliminary 2007 statistics provided by the Federal Statistics Office, 95 individuals were sentenced for human trafficking in cases where TIP was either the only crime, or the severest of the crimes, they were sentenced for. 67 of the 95 individuals received suspended sentences (71%), but these suspended sentences were only given to some of the persons sentenced to prison terms of two years or less. Ten individuals received prison sentences of between two and three years, and six individuals received prison sentences between three and five years (none of these sixteen sentences were suspended). These statistics do not capture any cases in which offenders were sentenced for multiple crimes, but among which the trafficking violation did not have the severest penalty of the crimes for which they were sentenced. Therefore, the German trafficking statistics under-represent the total number of traffickers sentenced. In practice, German prosecutors seek to prosecute TIP offenders by whatever means possible, often prosecuting for other crimes such as human smuggling, tax evasion, or forgery if they believe these other charges have a higher chance of resulting in a conviction. End Summary.

TIP Statistics for 2007

[1](#)2. (SBU) According to preliminary numbers proved by the Federal Statistics Office (StaB), German authorities prosecuted 155 persons for sex trafficking under Section 232 in 2007, the last year for which statistics are available. Of those, 123 were convicted, including 11 persons under the juvenile justice system. Of the remaining 112, 95 persons received prison sentences and 17 were required to pay a fine. Of the 95 persons sentenced to prison, 89 were sentenced to two years of prison or less and 67 of these 89 had their sentences suspended (71 percent of the total 95). Twelve of the 89 persons sentenced to two years of prison or less did not have their sentence suspended. Ten persons received prison sentences of two to three years and six persons received prison sentences of between three and five years.

[1](#)3. (SBU) Sections 233 and 233(a) only became effective in 2005 and, due to the time-intensive nature of labor trafficking investigations, German prosecution and sentencing statistics for 2007 do not reflect the full scope of German efforts to bring labor traffickers to justice. Nevertheless, it is clear that the extent of labor TIP prosecutions is significantly less than sex trafficking. German authorities prosecuted 13 persons under Section

233 in 2007. Of those, 8 persons were convicted, including two persons under the juvenile justice system. Of the remaining six, 3 received prison sentences of less than two years (two received 6-9 months and one between one and two years) and were required to pay a fine. All of those sentences were suspended.

Statistics Do Not Reflect Severity of Sentences

¶4. (U) StaB's methodology does not break down multiple convictions. As a result, the statistics fail to capture the full scope of German efforts to bring traffickers to justice. The TIP statistics do not include cases where human traffickers were convicted on multiple charges in which one of the charges, such as rape or murder, carries a higher maximum proscribed penalty. As a hypothetical example, the nature of the German statistics is such that a person successfully prosecuted for rape and TIP, who received prison sentences of eight and six years, respectively, would likely receive an overall sentence of around 11 years, but this judgement would not appear at all in the TIP section of the statistics (it would only appear in the statistics under the Rape category). Therefore, the trafficking statistics under-represent the total number of traffickers sentenced.

Number of suspended sentences misleading

¶5. (SBU) The statistics indicate that a majority of traffickers sentenced to prison received suspended sentences in 2007. German prosecutors are required to pursue legal action against all

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individuals accused of trafficking offenses, regardless of their level of involvement. As a result, German prosecution of TIP crimes is broad and many of the individuals who received suspended sentences played auxiliary roles in TIP crimes and were not the central figures in trafficking rings. Martin Links, a prosecutor from Frankfurt (Organized Crime Division), told Embassy staff that the threshold for criminal liability in TIP crimes is actually quite low. Links described the case of a person who accompanied trafficked women to a government office in order to register them as residents and receive residency documentation. On the basis of this activity, the individual was prosecuted under the Aiding TIP statute. In another case, a woman provided lingerie to trafficked women made to work in the sex industry and she was also prosecuted for aiding and abetting TIP. The statistics group together and do not differentiate between convictions for trafficking, aiding, abetting, and attempted trafficking.

German sentencing practices

¶6. (U) The maximum sentence for TIP is 10 years, while the maximum sentence for rape is open-ended. If a perpetrator commits a number of different crimes (e.g., trafficking, smuggling and rape) an aggregated sentence is formed. According to the Penal Code, the aggregate sentence shall be less than the sum of the individual sentences. It shall not, in the case of imprisonment for a fixed term, exceed fifteen years. The total sentence is determined on a case by case basis and is not based on a purely mathematical formula. In practice, judges often increase the highest individual sentence by half of the sum of all the other individual sentences combined.

¶7. (SBU) It is standard German practice for judges to suspend prison sentences of two years or less for all crimes, not just TIP crimes. But suspension of prison sentences of two years or less is not automatic. Links explained that the Penal Code allows for sentences between one and two years to be suspended only if certain requirements are met. Nevertheless, those who receive suspended sentences are generally required to perform community service, pay fines, and/or meet regularly with a parole officer. According to a study commissioned by the German Institute for Economic Research (DIW), 92 percent of individuals who received prison sentences (for

all crimes) of two years or less had their sentences suspended. By this metric, the use of suspended sentences in TIP crimes is well below the average.

[18](#). (U) This message has been coordinated with ConGen Hamburg.

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